UNITED
NATIONS

CCPR

International Covenant on
Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1310
15 April 1994

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1310th MEETING

Held at Headquarters, New York,
on Monday, 4 April 1994, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of El Salvador (CCPR/C/51/Add.8 and HRI/CORE/1/Add.34)

1. At the invitation of the Chairman, Mr. Melendez and Ms. Villalta (El Salvador) took places at the Committee table.

2. The CHAIRMAN said that section I of the list of issues concerned the constitutional and legal framework within which the Covenant was implemented, and the state of emergency. Paragraph (a) sought clarification as to whether any rights guaranteed in the Covenant had not been effectively incorporated in the Constitution of El Salvador, whether the remedy of amparo was available when such rights had been violated. Paragraph (b) referred to paragraph 26 of the second periodic report (CCPR/C/51/Add.8) and inquired about measures taken to ensure non-discrimination on the grounds specified in article 2, paragraph 1, and article 26 of the Covenant. Paragraph (c) requested additional information on the reasons that had led to the lifting of the state of emergency on 12 January 1987 and the ensuing enactment on 11 March 1987 of the "Act concerning the penal procedures applicable in connection with the suspension of constitutional rights". Paragraph (d) called on the reporting State to provide additional information on the purpose and contents of the "repealed Act adopted in 1989" and the compatibility of its provisions with article 4 of the Covenant. Paragraph (e) sought clarification as to whether the special military tribunals referred to in paragraphs 95 and 97 of the report had been abolished as a result of the repeal of the "Act concerning the penal procedures applicable in connection with the suspension of constitutional rights", and the information on whether there were any ordinary military tribunals and, if so, what their competence was. Paragraph (f) requested information on the scope and content of Decree No. 486 (amnesty law), adopted on 20 March 1993, on measures taken to ensure victims of human rights violations the right to an effective remedy under the Covenant and to compensation, and on the extent to which the report of the Commission on the Truth had been taken into account in that regard.

3. Ms. VILLALTA (El Salvador), referring to section I (a) of the list of issues, said that all the civil and political rights guaranteed in the Covenant had been incorporated in her country's Constitution as adopted in 1983 and amended several times subsequently. Salvadorian legislation provided for a number of remedies, including amparo. Under article 247 of the Constitution, any person could seek amparo before the Supreme Court of Justice for a violation of constitutional rights. The right to seek amparo had been further developed under the Constitutional Procedure Act, which provided that any person could have recourse to amparo before the Constitutional Section of the Supreme Court of Justice for a violation of the rights laid down in the Constitution. The Constitutional Section consisted of six judges, including the President of the Supreme Court.

4. For cases involving a violation of the right to freedom, the remedy of habeas corpus or personal appearance could also be invoked. Under article 247 of the Constitution, habeas corpus might be requested before the Constitutional

(Ms. Villalta, El Salvador)

Section of the Supreme Court of Justice or before the Chambers of Second Instance which were not situated in the capital. In addition, article 11 of the Constitution provided that every person had the right of habeas corpus, whenever any authority or individual illegally restricted his freedom. The remedy of habeas corpus was also provided for under article 38 of the Constitutional Procedure Act.

5. Turning to section 1 (b), she said that article 3 of the Constitution established the principle of equality of all before the law. In the enjoyment of civil rights, no restrictions could be enacted on the basis of differences of nationality, race, sex or religion. Under article 38 of the Constitution, workers must receive equal remuneration for equal work, regardless of sex, race, creed or nationality. Article 47 of the Constitution provided that employers, employees and workers had the right, without distinction as to nationality, sex, race, creed or political beliefs, to associate freely for the protection of their respective interests, by forming professional associations or trade unions. Under article 58 of the Constitution, no educational establishment could refuse to accept students by reason of the marital status of their parents or guardians, or by reason of social, racial or political differences. Salvadorian legislation also established the principle of equality of rights in the family for parents and children.

6. With regard to section I (c), she pointed out that under article 29 of the Constitution, guarantees of the right to enter, remain in and leave the national territory, of the right of every person to express and disseminate his thoughts, and of the right to assemble and meet peacefully could be suspended in the event of war, rebellion, or serious disturbances of the public order. On an exceptional basis, the guarantees embodied in articles 12 and 13 of the Constitution with regard to detention could be suspended. Under a state of emergency, such constitutional guarantees were suspended by the Legislative Assembly or, when that body was not in session, by the executive branch through the Council of Ministers.

7. From 1985 to 1987, certain constitutional guarantees had been suspended through decrees renewed every 30 days. It had been necessary to impose the state of emergency because of the attempts to subvert Salvadorian democracy. Until the constitutional reform in 1991, military tribunals had had jurisdiction in a state of emergency under the Act in question. With the repeal of the "Act concerning the penal procedures", civilians could no longer be brought before military tribunals during a state of emergency. Article 216 of the Constitution restricted the jurisdiction of military tribunals to the judgement and trial of purely military crimes and offences. Accordingly, under a state of emergency, civilians could be tried only by ordinary courts in El Salvador.

8. Referring to section I (d), she said that El Salvador had complied with domestic and international law when it had imposed the state of emergency. Only certain constitutional rights had been suspended, and article 4 of the Covenant had always been followed. Guarantees of basic rights such as the right to life had never been suspended in her country under the state of emergency.

9. Turning to section I (f), she said that Decree No. 486 provided for a broad and unconditional amnesty for persons who had committed offences within the

(Ms. Villalta, El Salvador)

context of the armed conflict in El Salvador. The amnesty related to both sides in the conflict and was designed to consolidate the peace process in the country and reunite Salvadorian society. The amnesty law broadened the concept of a political offence in El Salvador to cover those directed against the existence of the State, and applied not only to those who had been tried for offences, but also to those who had not. The amnesty law broadened the 1992 national reconciliation act and was unprecedented in the history of El Salvador.

10. El Salvador was encountering problems in compensating the victims of human rights violations. Studies were currently being carried out to determine ways of providing financial compensation. As a result of the 1991 reforms and the Peace Agreement, the Office of the Procurator for the Protection of Human Rights had been established. The Procurator dealt with all human rights violations and sought remedies for them. He was currently working with the Government to compensate as speedily as possible persons who had been victims of the armed conflict. The Commission on the Truth had stressed the need for the Government to set up a special fund to provide compensation to the victims of human rights violations, and the Government was obliged to allocate 1 per cent of all the international assistance that it received to the fund.

11. Mr. AGUILAR emphasized the importance of obtaining information on the factors impeding implementation of the Covenant in El Salvador, including the serious violations of human rights that had taken place during the civil war, and what the real human rights situation in the country was at present. Although the second periodic report (CCPR/C/51/Add.8) explained the various constitutional and legal safeguards for human rights, it ignored the fact that over the past 10 years the most atrocious violations of human rights had been committed, and that the judicial system itself had been found by the Commission on the Truth to be one of the major sources of those violations. He asked what steps had been taken to improve the situation in that respect.

12. Article 2 of the Covenant implied not only that compensation should be paid for serious violations of human rights, but that the full truth concerning such violations should be established. It was therefore discouraging to see how the amnesty law was being implemented, particularly in view of the fact that the Commission on the Truth had called for specific changes in that regard. The representative of El Salvador had just told the Committee that the intent of the amnesty law was to reunite Salvadorian society; it was difficult, however, to believe that it would have that effect, since a majority of the population objected to the way in which the law was being implemented and to the failure to remove some of the high officials who had been most guilty of violations of human rights. Moreover, the amnesty law itself was directly counter to the Covenant; the Covenant prohibited amnesty for such acts as the killing of the six Jesuits, but the law had extended amnesty to those acts. In view of those facts, he asked what the real status of the Covenant was under El Salvador's laws.

13. Although it was stated in the second periodic report that no state of emergency had existed in El Salvador after 1987, the Government had informed the Secretary-General of the imposition of a new state of emergency in 1989. He asked whether any of the rights guaranteed under the Covenant had been suspended during that new state of emergency, and if so, which.

(Mr. Aguilar)

14. He would also like more information on how article 3 of the Covenant was being implemented with regard to equal status for men and women, as it appeared that women in El Salvador were at a marked disadvantage as compared with men.

15. Mrs. CHANET said that there were unacceptable lacunae in the second periodic report, which did not seem to reflect accurately the reality of the violent civil war which had taken place in El Salvador. There also appeared to be some confusion in the report with regard to what rights were guaranteed under articles 4, 6 and 14 of the Covenant. Moreover, it was not enough merely to refer to the previous report on a number of important aspects of the human rights situation, as the second periodic report did.

16. It would be helpful to have detailed information on the specific place of the Covenant in El Salvador's legislation other than general references to the provisions of the Constitution. She agreed with what Mr. Aguilar had said about the Commission on the Truth and the amnesty law. The amnesty seemed so general that it was in fact absolute and pardoned all those who had committed human rights crimes during the civil war. Although the Commission on the Truth had identified a number of specific violations of the Covenant and made recommendations for remedial actions, including the impeachment of all the officials responsible for the violations and the creation of a supervisory body for the army, as well as compensation for the victims of the crimes committed, the amnesty law in effect seemed intended to block those recommendations, and deprived the victims of any remedy. In that connection, she wondered how the international community could be asked to help ensure compensation for such victims without having the persons responsible for the violations identified.

17. Although the report referred to the ending of the state of emergency, it seemed that a new state of emergency had been declared in 1989. She asked whether the period covered by that second action was regarded as a state of emergency, and if so, what rights guaranteed under the Covenant had been suspended.

18. Referring to article 26 of the Covenant, she asked for an explanation of the apparent discrepancy between the report's statement that no distinction was made between children born in and out of wedlock, and its later reference to rights inherent in the status of children born in wedlock.

19. Mr. PRADO VALLEJO said that there was a great discrepancy between the human rights legislation of El Salvador, which was good, and actual practice in the country. For example, although the right to life was guaranteed by law, thousands of people had been killed or had disappeared over the past decade; although the right to trial was guaranteed, summary executions had taken place. Moreover, the amnesty law now in effect appeared to override not only the rights referred to in paragraph 41 of the second periodic report (CCPR/C/51/Add.8), but the constitutional obligation concerning acts which could not be amnestied. The representative of El Salvador had said that the amnesty law was intended to reunite Salvadorian society, but it seemed unlikely to do so in view of the fact that the country had been the scene of the worst violations of human rights committed in Latin America. Although the Commission on the Truth had established that El Salvador's security forces had committed 95 per cent of the human rights violations, the amnesty law prohibited any action directed against

(Mr. Prado Vallejo)

those forces and completely pardoned all those who had been responsible for the worst violations, including those responsible for the killing of the six Jesuits.

20. It had been said that, in the interests of national reconciliation, the amnesty law treated all the human rights violations committed during the civil war as political crimes. The fact, however, was that such crimes as murder and torture were common crimes. How could national reconciliation take place under such circumstances? In his view, the amnesty law must be repealed, and he hoped that the new Government of El Salvador would consider repealing it. All the crimes committed during the recent past must be investigated and punished. The military commanders identified as responsible for human rights crimes must not be left in their posts, and the death squads still in existence must be abolished, and the victims of those crimes must be compensated, as the Covenant required. Until those things were done, there could be no democracy or national reconciliation in El Salvador. President Cristiani had sought and achieved agreement with opposition groups, and should continue his efforts in that direction by implementing the recommendations of the Commission on the Truth, including the reform of the judicial system.

21. He inquired whether the remedies of habeas corpus or amparo were available during states of emergency. Paragraph 84 of the report should be clarified, since it appeared to say that the Government could prolong a state of emergency indefinitely by issuing a new decree every 30 days. Turning to article 30 of the Constitution, he requested a definition of "Crimes of international importance".

22. Mr. BRUNI CELLI asked for more information about the value of the Covenant in domestic law, and on whether it could be invoked directly before the courts and had been thus invoked. It would be interesting to learn what laws had been changed since the initial report of El Salvador in order to comply with and recognize the articles of the Covenant not previously covered in its domestic legislation.

23. Concerning the amnesty law, he said that the right to know the truth, even a painful truth, could not be denied. The Commission on the Truth had not sought vengeance, but justice; furthermore, the Government of El Salvador had an international obligation to respect its findings. The Atlacatl Battalion had served as an agent of the State in committing acts of cruelty and murder against Salvadorian citizens, and those acts could not be characterized as acts of war. By punishing the guilty, the Government would bring that difficult era to a close and provide the assurance that such events would never be allowed to recur.

24. He was concerned that the Committee had received little information from non-governmental organizations, and wondered whether the report had been published in El Salvador and whether non-governmental organizations had been informed that it was to be submitted. He asked if the Procurator for the Protection of Human Rights had been consulted regarding its preparation.

25. Mr. WENNERGREN said that the report was comprehensive and provided much detail, but very little information on developments and progress in the field of human rights since the submission of the initial report. None of the tragic events and difficulties the country had undergone in the recent past were mentioned, and the Commission on the Truth had received only a passing reference.

26. In its report, the Commission on the Truth had expressed serious concerns regarding the administration of justice in El Salvador. He asked for more information on measures being taken to strengthen the administration of justice, which was clearly crucial to the rule of law, the promotion of democracy and the protection of human rights. In its reply to section I (a) of the list of issues, the delegation had stated that all the rights guaranteed under the Covenant had been incorporated in the Constitution. Such incorporation did not appear to be total, however; article 3 of the Constitution provided equality before the law, but difference of political opinion was not among the differences protected. Furthermore, article 6 of the Constitution addressed freedom of expression, but freedom of information was not included. Further comment from the delegation on that subject would be welcome.

27. Mrs. EVATT said that an understanding of the nature of the serious human rights violations which had occurred and why national institutions had failed to provide protection to individuals would be needed in order to establish the dialogue with the delegation of El Salvador. Therefore, she regretted that the report contained no information on the Commission on the Truth or the amnesty law.

28. The reporting State should clarify whether the fund for the compensation of victims recommended by the Commission on the Truth had been established, and if so, who controlled it and whether any victims had actually received compensation. She asked whether the Procurator for the Protection of Human Rights or another official awarded such compensation and what the details of the process were. The judiciary and the army had suffered from the failure of the rule of law, and more information was needed on steps being taken to ensure that they were aware of their responsibilities under the law. She asked whether the Procurator for the Protection of Human Rights could initiate proceedings of any type and whether any of his reports had been published.

29. The section of the report concerning family law (CCPR/C/51/Add.8, paras. 233-240) provided an opportunity for the discussion of the effectiveness of rights. Some inequalities in secondary law existed, but she wondered why the Constitution did not render those laws ineffective and whether they could be challenged before the courts. In view of the inequalities recognized, she inquired whether any new laws had been implemented.

30. Mr. LALLAH said that the amnesty law passed in March 1993 derogated from a number of rights protected by the Covenant, but no mention of that fact had been made in the report. That law removed criminals from the jurisdiction of the courts, thereby diminishing or removing the possibility of individual remedies for violations of human rights. He wondered if the Constitution contained a provision allowing the passage of a law, like the amnesty law, taking away the rights of individuals, and whether its constitutionality could be challenged.

(Mr. Lallah)

He asked whether the Procurator for the Protection of Human Rights had been given the opportunity to comment on the draft of that legislation.

31. Mr. BAN asked, concerning the relationship of domestic legislation with the Covenant, whether the list of rights included in the Constitution (para. 79 of the report) was exhaustive, as it appeared to him that articles 26 and 27 of the Covenant were not covered. He also requested clarification of paragraph 83. He asked whether the Covenant could be invoked directly before the courts or administrative authorities in individual cases, and if so, how many such cases there had been.

32. The importance of the appointment of the Procurator for the Protection of Human Rights had been emphasized in paragraph 68 of the core document (HRI/CORE/1/Add.34). Despite its independent position, however, that Office was part of the Department of Public Prosecutions, which would appear to limit its ability to act. He wondered whether any other non-governmental organizations or institutions, besides the Office of the Procurator for the Protection of Human Rights, had responsibility for safeguarding human rights. More information on the Government's position on the role of international human rights bodies and their ability to improve the situation would be helpful. More information was also needed on the working methods followed in drawing up the report. He asked whether it had been published before its submission.

33. Mrs. HIGGINS said that, notwithstanding what was stated in paragraph 1 of document CCPR/C/51/Add.8, the report from El Salvador must be regarded as the second periodic report; the document did not fulfil El Salvador's obligation under the Covenant in respect of two reports, and the Committee would therefore expect El Salvador to file its third report in the very near future.

34. The report was detailed, but it was somewhat formalistic and gave little sense of the real problems in the country. In particular, it was surprising that nothing was said in the report about the recommendations of the Commission on the Truth and their relation to the amnesty law.

35. The preconditions for making a reality of the rights enshrined in the Constitution were: freedom of expression; an independent judiciary; the political will to make offenders liable for their actions; and knowledge by citizens of their rights.

36. She invited the representatives of El Salvador to say which of the proposals of the Commission on the Truth El Salvador had accepted and implemented notwithstanding the amnesty law. She had noted what had been said about the possibility of making payments from a compensation fund, but pointed out that the amnesty law would make it difficult to determine entitlements. The existence of the amnesty law, moreover, removed the possibility that those who had actively violated human rights would face punishment. The lack of that punitive element seemed to indicate a lack of the political will that was essential if the entitlements under the Constitution, and under the Covenant, were to become a reality.

37. She asked how far El Salvador had progressed with the plan for purging the army, particularly in the light of the criticisms made by the Secretary-General

of the United Nations to the effect that the plans that had been announced in that regard were not in keeping with the peace accord.

38. She was also concerned that the lack of judicial reforms jeopardized the entire peace process. There was a widespread feeling, both in the United Nations and among non-governmental organizations, that the Supreme Court had been playing a negative role. As a result of the lack of judicial reform, habeas corpus did not work satisfactorily, even though enshrined in the Constitution, and more specific legislation was required on amparo.

39. Turning to paragraph 86 of the report, she noted that a number of individual constitutional rights could be suspended during a state of emergency. While appreciating that it might be necessary, in extreme circumstances, to restrict the freedom of movement of individuals, she would welcome an explanation from the representatives of El Salvador as to why it could ever be necessary, in any circumstances, to suspend the right of a detainee to be informed in an understandable fashion of his rights, or of the reasons for his detention, and to deprive a detainee of the benefit of legal advice.

40. She understood that the role of the Procurator for the Protection of Human Rights would be even more important after the departure of ONUSAL, and she asked whether the same person would continue in that role and whether he or his successor would be given the resources to ensure effective monitoring of human rights.

41. Finally, she expressed her surprise at the scope of the amnesty law and in particular at the statement made, apparently with pride, by the representative of El Salvador that the concept of a political offence was being broadened. Normally such a thing would be regarded as highly undesirable, and she would welcome an explanation as to why it was regarded in El Salvador as desirable.

42. Mr. POCAR said that the presence of a delegation from El Salvador was all the more welcome as the record of that country in submitting the required periodic reports to the Committee had not been a good one. He recalled that, at the end of 1987, the Committee had sent a letter to the Government of El Salvador asking for information on the assassination of the Chairman of the Salvadorian Human Rights Commission; the information had not yet been received. He hoped that the representatives of El Salvador who were attending the Committee's deliberations would be able to provide information on the assassination and on the measures taken in that connection.

43. He associated himself with the questions already raised by other members of the Committee, drawing particular attention to the amnesty law. Although acknowledging that such laws might be necessary in the interest of national reconciliation, he felt that they should be enacted only if they were an essential precondition for national reconciliation, and that it was important to ensure that human rights did not suffer. Any violation of human rights created a corresponding right to redress on the part of the victims, who were entitled to have the facts examined and, where appropriate, to receive compensation. An amnesty should not give comprehensive immunity from punishment to all those who had violated human rights while leaving the previous system intact and enabling offenders to continue to hold public office, sometimes in the very posts they

(Mr. Pocar)

had previously occupied. He associated himself with the doubts raised by Mr. Lallah as to whether the amnesty law was constitutional, and he looked forward to the explanations from the Salvadorian delegation on that matter.

44. He noted that the core document submitted by the Government (HRI/CORE/1/Add.34) said nothing about the Salvadorian Human Rights Commission and he asked the delegation whether it still existed.

45. Mr. EL-SHAFEI agreed with other members of the Committee that the report now being considered must be regarded as the second report, and he welcomed the fact that the Government of El Salvador had sent a delegation to introduce it.

46. He pointed out that the report had been drafted in August 1993 but that the delegation, in introducing it, had provided little information on what had happened in the interim. He hoped that the delegation would later provide additional details on the progress of reforms in El Salvador, on the difficulties encountered and on the factors obstructing the implementation of the Covenant in that country.

47. Although the present exercise was unconnected with the efforts of the United Nations in El Salvador to reconcile opposing parties, he felt that the Committee's concern with respect for the Covenant should be seen, not least by the authorities in El Salvador, as a contribution towards those efforts.

48. One of the key problems with which the Committee was concerned was the fact that, instead of heeding the recommendations of the Commission on the Truth, the Salvadorian authorities had immediately opted for a general amnesty law. That was part of a pattern that had also occurred in other countries; he invited the Salvadorian delegation to consult the records of the Committee's deliberations and to note that the consistent position of the Committee had been to oppose amnesty laws which covered up offences.

49. Mr. SADI, while welcoming the presence of representatives of El Salvador, said that it would have been even more useful if the Salvadorian delegation had included representatives from the Ministry of the Interior or from the Ministry of Justice, who would have been in a rather better position to provide comprehensive information to the Committee.

50. With reference to the remedies of habeas corpus and amparo, he asked whether the representatives of El Salvador could provide statistics on the extent to which those rights had been invoked and the degree of success achieved. He also asked how the amnesty law of 1993 would tie up with the obligations under the Geneva Conventions of 1949 and their two Additional Protocols, particularly the second Protocol, relating to the protection of victims of armed conflicts. Noting that the delegation of El Salvador had referred to the question of compensation for the victims of human rights violations, he drew attention to the existence of the United Nations Voluntary Fund for Victims of Torture; the Salvadorian authorities might approach the United Nations concerning the possibility of making use of that Fund.

51. Mr. HERNDL said that the core document (HRI/CORE/1/Add.34) provided useful information, particularly on the amendments to the Constitution of El Salvador in 1991 and 1992. He welcomed the periodic report, but agreed that to combine the second and third periodic reports due from El Salvador was not an acceptable interpretation of that country's obligations under article 40 of the Covenant.

52. The main problem in respect of human rights in El Salvador was that country's failure to give effect to the recommendations of the Commission on the Truth. The Government had bound itself to accept the Commission's recommendations, and it was therefore most regrettable that, instead of implementing the recommendations, it had set them aside and had passed the amnesty law. He noted that when the constitutionality of the amnesty law had been challenged in the Supreme Court, the Court had ruled that the case was not receivable because it concerned a political matter. That was in spite of the fact that article 183 of the Constitution provided that the Supreme Court had the power to declare laws unconstitutional and that a procedure to that effect might be initiated by any individual.

53. Noting that according to document CCPR/C/14/Add.7, which contained supplementary information to the initial report of El Salvador (CCPR/C/14/Add.5), the provisions of the Covenant could not be invoked directly before the judicial or administrative authorities, he asked how that could be so, given that the Constitution stated that the Covenant was part of the law of the land.

54. Referring to paragraphs 67 to 69 of document HRI/CORE/1/Add.34, he noted that the activities of the Procurator for the Protection of Human Rights included the investigation of complaints concerning cases of human rights violations. He asked what sanctions the Procurator could apply if he found that there had indeed been a violation of human rights.

55. Mr. FRANCIS associated himself with the questions already raised by other members of the Committee. He asked whether the issue of compensation had been considered before the amnesty law had been promulgated; whether the Salvadorian authorities had considered that an amnesty law would constitute a flagrant breach of El Salvador's obligation to punish human rights violations; and whether it was understood that the amnesty law did not relieve the State of its obligation to compensate victims of human rights violations.

56. The CHAIRMAN expressed the hope that the principal concern of the Committee, namely the passing of the amnesty law and the consequent rejection of the recommendations of the Commission on the Truth, was clear to the Salvadorian delegation.

The meeting rose at 1.05 p.m.